STATE OF MICHIGAN

COURT OF APPEALS

CHILDREN'S HOSPITAL OF MICHIGAN,

Plaintiff-Appellant,

v

PATRICIA CRADDOCK and MICHIGAN EMPLOYMENT SECURITY COMMISSION,

Defendants-Appellees,

UNPUBLISHED
May 19, 1998

No. 201014
Wayne Circuit Court
LC No. 95-521583 AE

Before: Neff, P.J., and O'Connell and Young, Jr., JJ.

PER CURIAM.

Plaintiff Children's Hospital appeals from a circuit court order affirming the decision of the Michigan Employment Security Commission (MESC) Board of Review awarding unemployment benefits to plaintiff's former employee, defendant Patricia Craddock (defendant). This case comes to this Court on remand from the Supreme Court for consideration as on leave granted.[1] We affirm.

At issue is whether after-discovered evidence of employee misconduct may form the basis for a disqualification from receiving unemployment benefits under the Michigan Employment Security Act (MESA), MCL 421.1 *et seq.*; MSA 17.501 *et seq.* We hold that it may not.

Defendant worked for plaintiff as a medical secretary from September 13, 1988, until she was terminated October 4, 1993, for excessive tardiness and absenteeism. Four days later, plaintiff discovered that some important computer files had been deleted on the early morning of September 21, 1993. Because records indicated that defendant was the only employee on the premises with access to those files at that time, plaintiff concluded that defendant was responsible for the deletions. On November 17, 1993, the MSEC concluded that defendant was disqualified for unemployment benefits on the ground that she had engaged in employee misconduct by repeatedly violating plaintiff's rules. However, defendant persuaded the MESC to reverse its initial determination, on the ground that defendant's pattern of missing work was the result of her child's illnesses, which could not be considered an intentional disregard for plaintiff's interests. A hearing before an MESC referee followed, the referee affirming the redetermination, stating that absences resulting from illness do not constitute misconduct, and adding that the problem with the deleted computer files was not discovered until after

the date of discharge and accordingly was not considered with regard to the circumstances surrounding defendant's discharge. The MESC Board of Review affirmed the decision of the referee. Plaintiff then appealed to the circuit court.

The court affirmed the Board's decision, satisfied that defendant's absences resulted from illness and not an intentional disregard for plaintiff's interests. Although the court expressed some concern about the allegations of computer sabotage, the court concluded that the referee correctly decided not to consider that evidence.

Our review of a decision from the MESC Board of Review is limited to determining whether the decision is contrary to law or not supported by competent, material, and substantial evidence on the record. *Trumble's Rent-L-Center, Inc v Employment Security Comm*, 197 Mich App 229, 233; 495 NW2d 180 (1992). Plaintiff does not dispute that defendant was discharged specifically for excessive absenteeism and tardiness, but argues that all of her conduct, including that which was not discovered until after her termination date, should be considered in the determination of whether she is entitled to unemployment benefits. Thus the question before us is whether the Board of Review misconstrued the law in concluding that after-discovered evidence does not provide grounds for finding employee misconduct for purposes of denying unemployment benefits.

Plaintiff urges the application of the after-acquired evidence doctrine to determinations of disqualifying misconduct under the MESA. See *McKennon v Nashville Banner Publishing Co*, 513 U S ___; 115 S Ct 879, 884;130 L Ed 2d 852, 863 (1995) (after-acquired evidence does not bar all recovery under the Age Discrimination in Employment Act, 29 USC 621 *et seq.*, but may provide a basis for denying reinstatement and front pay).

In the context of civil rights litigation, this Court has held that after-acquired evidence of employee misconduct may establish a defense to a claim for reinstatement, or for damages arising after the misconduct became known. *Horn v Dep't of Corrections*, 216 Mich App 58, 66-69; 548 NW2d 660 (1996); *Wright v Restaurant Concept Management, Inc*, 210 Mich App 105, 112-113; 532 NW2d 889 (1995). Likewise, in wrongful discharge cases, "[j]ust cause for termination may include facts and circumstances existing at termination but not known to the employer." *Bradley v Philip Morris, Inc*, 194 Mich App 44, 48; 486 NW2d 48 (1991).

However, none of these cases concerned the precise disqualification language of the governing provision of the MESA: "An individual is disqualified from receiving benefits if he or she . . . [w]as discharged for misconduct connected with the individual's work . . . ." MCL 421.29(1)(b); MSA 17.531(1)(b). Statutory construction is a question of law, which this Court reviews de novo. *Haworth, Inc v Wickes Mfg Co*, 210 Mich App 222, 227; 532 NW2d 903 (1995).

The MESA is a remedial statue that accordingly should be construed broadly in order to effect its purpose. *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 416-417; 565 NW2d 844 (1997). The statute was enacted to provide some relief from the burdens of unemployment for those who become involuntarily unemployed through no fault of their own. *Id.* at 417. Thus, provisions for disqualification should be construed narrowly. *Id.* at 416.

The legislation at issue plainly provides for disqualification from benefits for those "*discharged* for misconduct connected with the individual's work." MCL 421.29(1)(b); MSA 17.531(1)(b) (emphasis added). The Legislature is presumed to have intended the meaning it plainly expressed. *Trumble's Rent-L-Center, Inc, supra*, at 233. Here, the legislation clearly limits the misconduct disqualification to conduct that formed the basis for the discharge. "Where the statutory language is clear, the courts should neither add nor detract from its provisions." *Paschke v Retool Industries*, 445 Mich 502, 511; 519 NW2d 441 (1994). To broaden the misconduct disqualification to include allegations that did not bear on the decision to discharge the employee would be to fail to construe the disqualification narrowly, and to fail to respect the plain meaning of the words used.

For these reasons, we conclude that the trial court correctly affirmed the MESC Board of Review's decision because the decision was authorized by law and was supported by competent, material, and substantial evidence.

Affirmed.

/s/ Janet T. Neff
/s/ Peter D. O'Connell
/s/ Robert P. Young, Jr.

[1] *Children's Hospital of Michigan v Craddock*, 454 Mich 863; 560 NW2d 629 (1997).